IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

INCOME TAX APPEAL NO.1 OF 2002

The Commissioner of Income-tax,
City-II, Mumbai Appellant

vs.

M/s. Ewac Alloys Ltd. Respondent

Ms. S. V. Bharucha i/b. Mr. H. D. Rathod for the appellant.

CORAM : R.M. LODHA &
J. P. DEVADHAR,JJ.

Date : 12h August 2004

P.C.:

Heard the learned counsel for the revenue.

2. In the memo of appeal two questions of law have been proposed. The said questions are thus:

> "(a) Whether on the fact and circumstances of the case and in law, the Hon'ble ITAT was justified in directing the deletion of addition of Rs. 22.51 lakhs made by the Assessing Officer on account of valuation of closing stock for availing of Modvat credit by the

> Assessee, while relying on the decision of this Hon'ble Court in case of Indo Nippon Chemicals (245 ITR 384)?
>
> (b) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in directing the Assessing Officer to verify and re-check the claim of the assessee made under the provisions of section of section 80 I of the I.T. Act relating to the Interest received and paid by the assessee and taking into account the net interest?"

3. In so far as question (a) is concerned, the learned counsel for the revenue did not dispute that the controversy is concluded by the judgment of the Supreme Court in the case of Commissioner of Income-tax v. Indo Nippon Chemicals Co. Ltd., 261 ITR 275. Thus, question (a) does not survive.

4. As regards question (b), the Tribunal considered the matter in paragraph 2 of its order thus:

> "2. The second ground relating to the computation of the deduction under section 80I of the Act is restored to the file of the AO. He will verify whether the interest received and paid by the assessee and in respect of which the assessee claims the principle of netting is of the same nature as in the assessee's own case reported in 42 ITD 218. If the interest is of the same nature as in the reported decision, the AO shall follow the Tribunal's order and allow relief. Before taking a decision one way or the other the AO shall afford adequate opportunity to the assessee of being heard. The ground is allowed for

statistical purposes."

5. The consideration of the matter by the Tribunal does not suffer from any infirmity. The Tribunal has already observed that before taking a decision on this aspect the assessing officer shall afford adequate opportunity to the assessee of being heard.

6. The proposed question (b) cannot be said to be a substantial question of law.

7. Appeal is dismissed in limine.

(R. M. LODHA, J.)

(J. P. DEVADHAR,J.)